

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	
)	

**REPLY DECLARATION OF ANTHONY GIOVANNUCI
ON BEHALF OF AT&T CORP.**

1. My name is Anthony J. Giovannuci. My business address is 207-209 F Street, South Boston, Massachusetts. I am a Director with AT&T Network Engineering and Operations, specifically overseeing AT&T's Media Engineering organization which is responsible for planning and deploying AT&T's transmission media, *e.g.*, fiber and microwave, nationally for both Local and Long Distance applications. In my current position, I am responsible, among other things, for a number of key areas of Outside Plant activity, including building rights-of-entry.

2. I have testimony in the *Triennial Review Proceeding* explaining the impairments that competitive carriers encounter in their attempts to deploy their own loop and transport facilities, including inside wire loops or subloops provisioned within multi-tenant environments (MTEs). I also provided a joint declaration with Anthony Fea in the comments round of this proceeding addressing, among other issues, the obstacles that competitors face in negotiating access to a particular MTEs – an obstacle that poses a continuing barrier to entry independent of the general “impairments” that also exist.

3. As I stated in my declaration submitted with AT&T's comments, building owners may preclude completely access to MTEs, or as is more commonly the case, may limit a competitor's access to a particular customer in the building (a fiber-to-the floor installation). The Commission correctly recognized the serious impediments of such limitations, and their impact on a competitor's ability to use self-provided loops to serve a customer. *Triennial Review Order* ¶ 305. Because of these limitations, even where building owners permit AT&T to deploy fiber-to-the floor, AT&T often is forced to purchase special access services from the ILEC to serve *other* customers in the building. Moreover, even if a competitive carrier has deployed facilities in one building, it may be impossible to deploy facilities to an adjacent building because the building owner may prohibit it from provisioning facilities within that building.

4. The purpose of this reply declaration is to provide the Commission with specific recent examples of obstacles that AT&T faces in its attempts to gain access to MTEs.

5. *Stamford, Connecticut.* Despite the existence of a non-discriminatory building access statute in the state of Connecticut, AT&T has spent nearly a year in trying to serve a new customer in an MTE. In November 2003, TCG, a wholly-owned subsidiary of AT&T, began its attempts to install telecommunications cable, fiber and equipment for a customer in an MTE. The only material that TCG needed to install outside of the customer's leased premises was fiber between the thirteenth floor (where TCG's customer is located) and the ninth floor, where the fiber would be spliced into existing TCG fiber already serving another tenant. The splicing would take place at a junction box to be installed in the utility closet on the ninth floor. Significantly, such

utility closets are used by all vendors to run fiber through the building, as needed. Utility closets are also typically used by tenants with space on multiple floors to route wiring between floors. In this MTE there are existing penetrations between floors in these closets, with ample space remaining for the TCG fiber required, and the installation would minimally impact any future use of these penetrations. It should also be noted that this fiber installation would not require the use of any of the building owner's common space.

6. Several months after TCG submitted its agreement to cover the installation of fiber between the two floors, the building owner communicated to TCG that it wanted the license agreement to also cover the pre-existing TCG facilities that are used to service another TCG customer in the building. It should be noted that for the previous installation, which was made nearly three (3) years ago, the building owner did not require such an agreement. Additionally, the building owner proposed the use of a different type of license agreement that contemplated the use of common space, notwithstanding the fact that TCG does not utilize common space to serve its existing customer, and would not require common space to serve its new customer. In proposing an arrangement for the use of common space, the building owner demanded that TCG pay a fee for the right to install fiber to serve its customers in the building. The building owner did not, however, specify the amount of the fee.

7. Even though TCG had no plans to use any common space in the building, in January 2004 TCG offered to pay the building owner \$300 a month, so that TCG could install the facilities and offer service promptly to its new customer. When the building owner refused the offer, TCG subsequently offered \$500 per month, again in an effort to

be able to promptly provide service to its new customer. In response to the offer, the building owner indicated that TCG's telecommunications facilities used to serve its existing customer in the building must first be *removed* before further negotiations regarding a right of entry to install fiber to serve the new customer could continue. When TCG made further attempts to discuss its desire to serve its new customer, the building owner, still demanding a higher per month fee, stated "we don't have to let you in the building, there are already service providers in place that the tenant can use."

8. When TCG stated that the customer should have the right to choose its provider, especially in light of the fact that TCG /AT&T was their provider of choice at all of their other facilities, the building owner replied that they will just have to "get along with the building's preferred providers." Even though TCG continued its attempts at negotiating access to serve this new customer, the building owner insisted that either TCG make a "better offer" (without ever suggesting what they considered an appropriate fee) or remove its previously installed telecommunications equipment. Even after the tenant sent a letter to the building owner requesting consent for TCG to bring fiber optic cable into its space, the building owner continued to threaten TCG that it would be necessary for TCG to remove all existing equipment and lines located within the building. During all of the negotiations that took place, the building owner continually refused to state what it considered to be a reasonable monthly fee, and *never* made a counter offer.

9. Recognizing that the building owner was not negotiating in good faith, TCG ultimately filed a petition before the Connecticut Department of Public Utility Control seeking to enforce the DPUC's building access regulations. TCG thereafter

agreed to have this matter heard by a DPUC mediator, and although an agreement for access to the building was reached at the mediation, the building owner has continued to delay in the execution of an access agreement setting forth the terms that were agreed upon at the mediation. As of this date -- almost one year later -- TCG is still unable to provide service to its new customer located within this building.

10. New York, New York. *In the City of New York, AT&T has recently experienced numerous obstacles in obtaining access to MTEs, including the following:*

- a. A building owner refused to discuss permitting AT&T building access while contemplating a sale of the building. After waiting over four months for AT&T to complete installation, the customer cancelled its service.
- b. A building owner's rent demands were so exorbitant that AT&T could not provide a financially viable service to the customer.
- c. A building owner outright refused to negotiate a right of entry into the building. AT&T was unable to serve the customer.
- d. After 14 months of delay tactics by the owner of another building, the customer finally cancelled AT&T's service.
- e. In another instance, a customer cancelled its order after unsuccessful and lengthy negotiation between AT&T and the building owner.

11. Connecticut and New York provide typical examples of the problems that AT&T encounters in accessing MTEs, either because the building owner (1) refuses outright to permit entry; (2) causes unreasonably delays permitting access to the building; or (3) charges excessive rent. In 2004 alone, for instance, there have been dozens of locations throughout the country in which landlords have refused to allow entry, or have

substantially delayed negotiations causing AT&T to lose its customer(s). AT&T's negotiations for access to a substantial number of buildings currently exceed 100 days, and at least one negotiation has continued for almost two years.

12. The result of these impairments to building entry is that AT&T loses substantial revenue, not only because customers *cannot* utilize AT&T's services in particular buildings where landlords may be uncooperative, but *will not* use AT&T in other buildings after such problems occur. Also, where the building owner insists on charging exorbitant fees, AT&T is often unable to provide a financially viable service to potential customers.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

October 18, 2004.

/s/ Anthony J. Giovannuci
Anthony J. Giovannuci